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11

12 IN THE UNITED STATES DISTRICT COURT
13 DISTRICT OF UTAH, CENTRAL DIVISION

14 UNITED STATES OF AMERICA,)	
)	CIVIL ACTION NO.
15 Plaintiff,)	
)	
16 v.)	COMPLAINT
)	
17 MOBIL EXPLORATION &)	
PRODUCING U.S. INC.,)	
)	
18 Defendant.)	
19)	

20
21 The United States of America, by authority of the Attorney General of the United States
22 and through the undersigned attorneys, acting at the request of and on behalf of the Administrator
23 of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges
24 the following:

25 STATEMENT OF THE CASE

26 1. This is a civil action brought pursuant to Section 113(b) of the Clean Air Act (the
27 "Act"), 42 U.S.C. § 7413(b), for injunctive relief and the assessment of civil penalties against
28 Mobil Exploration & Producing U.S. Inc. ("Mobil") for violations of the Act at Mobil's McElmo

1 Creek Unit oil production facility and associated oil fields (the "Facility"), located near Aneth,
2 Utah, on the Navajo Nation.

3 JURISDICTION AND VENUE

4 2. This Court has jurisdiction over the subject matter of this action under Section
5 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1331, 1345, and 1355.

6 3. Authority to bring this action is vested in the United States Department of Justice
7 pursuant to Section 305 of the Act, 42 U.S.C. § 7605, and 28 U.S.C. §§ 516 and 519.

8 4. Venue is proper in this judicial district under Section 113(b) of the Act, 42 U.S.C.
9 § 7413(b), and 28 U.S.C. §§ 1391(b) and 1395.

10 5. Notice of the commencement of this action has been given to the Navajo Nation
11 Environmental Protection Agency ("Navajo EPA") and the Utah Department of Environmental
12 Quality, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

13 PARTIES

14 6. The United States of America, acting at the request and on behalf of the
15 Administrator of EPA, is the Plaintiff.

16 7. Mobil, a Delaware corporation with its corporate headquarters located in Houston,
17 Texas, is the Defendant. Mobil owns and operates the Facility.

18 8. Mobil is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C.
19 § 7602(e).

20 STATUTORY AND REGULATORY BACKGROUND

21 9. The Act is intended to protect and enhance the quality of the nation's air resources
22 so as to promote the public health and welfare and the productive capacity of its population. 42
23 U.S.C. § 7401(b)(1).

24 SIP and PSD Requirements

25 10. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA (the
26 "Administrator") to promulgate national ambient air quality standards ("NAAQS") for certain air
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1 pollutants to protect public health and welfare. The Administrator has promulgated NAAQS for
2 the following pollutants: sulfur dioxide ("SO₂"), particulate matter ("PM"), carbon monoxide
3 ("CO"), ozone, nitrogen dioxide ("NO₂"), and lead. 40 C.F.R. Part 50. Because emissions of
4 volatile organic compounds ("VOCs") act as a precursor in the formation of ozone, federal and
5 state regulatory measures to attain the NAAQS for ozone focus on the reduction or elimination of
6 VOC emissions.

7 11. To achieve the NAAQS, Section 110 of the Act, 42 U.S.C. § 7410, requires each
8 state to adopt and submit to the Administrator for approval a plan (a "State Implementation Plan"
9 or "SIP") that provides for the implementation, maintenance, and enforcement of the NAAQS in
10 each air quality control region within the state. Once EPA approves a SIP, it is independently
11 enforceable by the federal government under Section 113 of the Act, 42 U.S.C. § 7413.

12 12. Section 161 of the Act, 42 U.S.C. § 7471, requires each SIP to contain emission
13 limitations and such other measures as may be necessary to "prevent significant deterioration" of
14 air quality in each region designated as "attainment" (i.e., a region that meets the NAAQS) or as
15 "unclassifiable" (i.e., a region that cannot be classified as meeting or not meeting the NAAQS).

16 13. The region in which the Facility is located is an "attainment" or "unclassified"
17 region for the NAAQS for SO₂, PM, CO, ozone, and NO₂. 40 C.F.R. § 81.345.

18 14. Pursuant to Part C of Subchapter I of the Act, 42 U.S.C. §§ 7470-7492, the
19 Administrator promulgated "prevention of significant deterioration" of air quality ("PSD")
20 regulations, codified at 40 C.F.R. § 52.21. The PSD regulations, which were incorporated and
21 made part of the Utah SIP, apply to proposed major stationary sources or major modifications to
22 be located on Indian Reservations within Utah. 40 C.F.R. §§ 52.21(a)(1) and 52.2346(b).

23 15. The Navajo Nation is an "Indian Reservation" within the meaning of 40 C.F.R.
24 § 52.21(b)(27).

25 16. Pursuant to 40 C.F.R. § 52.21(a)(2)(iii), no new major stationary source or major
26 modification shall begin actual construction without a permit (hereinafter referred to as a "PSD
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1 permit”) stating that the major stationary source or major modification will meet the
2 requirements of 40 C.F.R. § 52.21(j) through (r)(5).

3 17. Pursuant to 40 C.F.R. §§ 52.21(r)(1) and 52.23, any owner or operator who
4 (1) constructs or operates a source or modification not in accordance with the terms of any PSD
5 permit, or (2) fails to comply with any PSD permit condition shall be subject to enforcement
6 action under Section 113 of the Act, 42 U.S.C. § 7413.

7 Standards of Performance for Equipment Leaks of VOCs
8 from Onshore Natural Gas Processing Plants
9 (40 C.F.R. Part 60, Subparts A and KKK)

10 18. Section 111(b) of the Act, 42 U.S.C. § 7411(b), required EPA to: (1) publish a
11 list of categories of stationary sources that, in EPA’s judgment, cause or contribute significantly
12 to air pollution that may reasonably be anticipated to endanger the public health or welfare, and
13 (2) promulgate standards of performance for new sources within those categories. These
14 standards, known as the New Source Performance Standards (“NSPS”), are codified at 40 C.F.R.
15 Part 60.

16 19. On December 23, 1971, EPA promulgated the NSPS General Provisions, codified
17 at 40 C.F.R. Part 60, Subpart A (“NSPS Subpart A”). 36 Fed. Reg. 24,877. NSPS Subpart A
18 includes requirements that apply to owners and operators who are subject to subsequent Subparts
19 of 40 C.F.R. Part 60, except when otherwise specified in a particular Subpart.

20 20. On June 24, 1985, EPA promulgated the NSPS for equipment leaks of VOCs
21 from onshore natural gas processing plants, codified at 40 C.F.R. Part 60, Subpart KKK (“NSPS
22 Subpart KKK”). 50 Fed. Reg. 26,124. NSPS Subpart KKK applies to the following “affected
23 facilities” in onshore natural gas processing plants that commenced construction, modification,
24 or reconstruction after January 20, 1984: a compressor in VOC service or in wet gas service, and
25 the group of all equipment (except compressors) within a process unit. 40 C.F.R. § 60.630(a)-
26 (b). In addition, a compressor station, dehydration unit, sweetening unit, underground storage
27 tank, field gas gathering system, or liquified natural gas unit is covered by NSPS Subpart KKK if
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1 it is located at an onshore natural gas processing plant. 40 C.F.R. § 60.630(e).

2 21. NSPS Subpart KKK requires each owner or operator to comply with the VOC
3 leak detection and repair ("LDAR") requirements of 40 C.F.R. §§ 60.482-1(a), (b), and (d) and
4 60.482-2 through 60.482-10 (except as provided in 40 C.F.R. § 60.633) no later than 180 days
5 after initial start-up. 40 C.F.R. § 60.632(a).

6 22. Pursuant to 40 C.F.R. §§ 60.482-4(c), 60.482-10(a) and (d), and 60.633(g), an
7 owner or operator of a pressure relief device equipped with a closed vent system capable of
8 capturing and transporting leakage through the pressure relief device to a flare shall comply with
9 the flare requirements of 40 C.F.R. § 60.18.

10 23. Pursuant to 40 C.F.R. § 60.18(f)(2), the presence of a flare pilot flame shall be
11 monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

12 24. Pursuant to 40 C.F.R. § 60.11(d), owners and operators shall at all times and to
13 the extent practicable maintain and operate any affected facility, including associated air
14 pollution control equipment, in a manner consistent with good air pollution control practices for
15 minimizing emissions.

16 25. Section 111(e) of the Act, 42 U.S.C. § 7411(e), makes it unlawful for any owner
17 or operator of any new source to which an NSPS applies to operate the source in violation of
18 such NSPS. Violations of Section 111(e) of the Act subject the violator to injunctive relief and
19 civil penalties pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b).

20 National Emission Standard for Asbestos
21 (40 C.F.R. Part 61, Subparts A and M)

22 26. Section 112 of the Act, 42 U.S.C. § 7412, required EPA to promulgate the
23 National Emission Standards for Hazardous Air Pollutants ("NESHAP") regulations to establish
24 emissions standards for certain hazardous air pollutants. NESHAPs promulgated before
25 November 15, 1990, are codified at 40 C.F.R. Part 61.

26 27. On April 6, 1973, EPA promulgated the NESHAP General Provisions, codified at
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1 40 C.F.R. Part 61, Subpart A ("NESHAP Subpart A"). 38 Fed. Reg. 8,826. NESHAP Subpart A
2 includes requirements that apply to owners and operators who are subject to subsequent Subparts
3 of 40 C.F.R. Part 61.

4 28. On April 5, 1984, EPA promulgated the NESHAP for asbestos, codified at 40
5 C.F.R. Part 61, Subpart M ("NESHAP Subpart M"). 49 Fed. Reg. 13,661. NESHAP Subpart M
6 includes standards for control of asbestos emissions associated with the demolition and
7 renovation of facilities. See generally 40 C.F.R. § 61.145.

8 29. NESHAP Subpart M requires each owner or operator of a demolition or
9 renovation activity to provide EPA with written notice of intention to demolish or renovate
10 before the commencement of such activity. 40 C.F.R. § 61.145(b).

11 Enforcement Authority under the Act

12 30. Section 113 of the Act, 42 U.S.C. § 7413, provides that the Administrator is
13 authorized to commence a civil action for appropriate relief, including injunctive relief and civil
14 penalties, against any person who has violated or is in violation of any requirement or prohibition
15 of an applicable SIP or permit, or any requirement or prohibition of any rule promulgated under
16 Sections 111 or 112 of the Act, 42 U.S.C. §§ 7411, 7412. With regard to a violation of any
17 requirement or prohibition of an applicable SIP or permit, the Administrator may commence a
18 civil action at any time after the expiration of thirty days following the Administrator's issuance
19 of a Notice of Violation.

20 GENERAL ALLEGATIONS

21 31. In 1984, Mobil purchased the Facility from Superior Oil Company.

22 32. On May 13, 1986, Mobil submitted to EPA an application for a PSD permit to
23 construct and operate additional internal combustion engines at the Facility.

24 33. On February 2, 1987, EPA issued to Mobil a PSD permit that allowed Mobil to
25 construct three additional internal combustion engines. This PSD permit was subsequently
26 amended in October 1987 to allow Mobil to install two gas turbines rather than the three internal
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1 combustion engines. The permit was again amended on April 19, 1991, to allow Mobil to install
2 and operate one gas turbine (instead of two) and to replace existing heating equipment with a
3 waste heat recovery unit. This PSD permit, as amended, is hereafter referred to as the "Mobil
4 PSD Permit."

5 34. Condition No. 3 of the Mobil PSD Permit states that "[Mobil] shall operate no
6 pollutant-emitting equipment at the McElmo Creek Unit [i.e., the Facility] other than that listed
7 in Tables 1 and 2 of this permit."

8 35. Condition No. 4 of the Mobil PSD Permit states that "[Mobil] shall limit facility
9 wide emissions to those shown in Table 1, on a rolling 12-month basis." The facility-wide
10 authorized emissions shown in Table 1 are as follows: 1.25 tons per year ("tpy") of SO₂, 477.29
11 tpy of oxides of nitrogen ("NO_x"), 109.67 tpy of CO, and 38 tpy of VOC.

12 36. In 1986, Mobil constructed a natural gas processing plant (the "Gas Plant") at the
13 Facility. The Gas Plant included an upright flare, a dehydrator, an amine treater, a refrigeration
14 separation unit, and a natural gas liquids recovery unit.

15 37. After receiving the Mobil PSD Permit, Mobil began to route process and excess
16 waste gas from its field gas gathering system and injection well system to the Gas Plant's upright
17 flare.

18 38. From 1992 through 1997, Mobil installed and operated petroleum liquid storage
19 tanks and heater treaters at the Facility (hereinafter referred to collectively as "Tanks and Heater
20 Treaters").

21 39. Beginning in 1997, Mobil began to remove some of the Gas Plant's equipment.
22 Mobil continues to operate the Gas Plant's upright flare at the Facility.

23 40. Mobil is the "owner or operator" of the Facility, which included the Gas Plant,
24 within the meaning of Sections 111(a)(5) and 112(a)(9) of the Act, 42 U.S.C. §§ 7411(a)(5),
25 7412(a)(9).

26 41. The Facility, which included the Gas Plant, is a "stationary source" within the
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1 meaning of Sections 111(a)(3) and 112(a)(3) of the Act, 42 U.S.C. §§ 7411(a)(3), 7412(a)(3).

2 42. The Gas Plant was both "onshore" and a "natural gas processing plant" as those
3 terms are defined in 40 C.F.R. § 60.631.

4 43. The Gas Plant's pressure relief devices that were connected to the Gas Plant's
5 upright flare through a closed vent system were each a "new source" as that term is defined in
6 Section 111(a)(2) of the Act, 42 U.S.C. § 7411(a)(2), and an "affected facility" as that term is
7 defined in 40 C.F.R. §§ 60.2 and 60.630(a)-(b). Mobil was an "owner or operator" of these
8 affected facilities as that term is defined in 40 C.F.R. § 60.2.

9 44. The Gas Plant's dehydration units and field gas gathering systems were located at
10 an onshore natural gas processing plant and were subject to the requirements of NSPS Subparts
11 A and KKK. 40 C.F.R. § 60.630(e).

12 45. The Gas Plant was a "facility" as that term is defined in 40 C.F.R. § 61.141.

13 46. Pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a), EPA issued to Mobil
14 a Notice and Finding of Violation on September 5, 1997, informing the company that it had
15 violated the Mobil PSD Permit and the requirements of NSPS Subparts A and KKK.

16 47. Pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a), EPA issued to Mobil a
17 Notice and Finding of Violation on June 7, 1999, informing the company that it had violated the
18 Mobil PSD Permit and the requirements of NESHAP Subpart M.

19 FIRST CLAIM FOR RELIEF

20 (Failure to Comply with Condition No. 3 of the Mobil PSD Permit)

21 48. Paragraphs 1 through 47, above, are realleged and incorporated herein by
22 reference.

23 49. Mobil's operation of the Tanks and Heater Treaters has resulted in emission of
24 pollutants, including SO₂, NO_x, CO, and VOCs.

25 50. Mobil's operation of the Gas Plant's upright flare has resulted in emissions of
26 pollutants, including SO₂, NO_x, CO, and VOCs.

51. The Tanks and Heater Treaters and the Gas Plant's upright flare are not listed in Table 1 or 2 of the Mobil PSD Permit.

52. Mobil's operation of the Tanks and Heater Treaters and the Gas Plant's upright flare is a violation of Condition No. 3 of the Mobil PSD Permit, which prohibits operation of pollutant-emitting equipment at the Facility that is not listed in Table 1 or 2 of the Mobil PSD Permit.

53. Each violation of Condition No. 3 of the Mobil PSD Permit subjects Mobil to liability under the Act.

54. Unless enjoined by an order of the Court, Mobil will continue to violate the Act. Pursuant to Section 113(b) of the Act, the United States is entitled to injunctive relief against Mobil for its continuing violations of the Act.

55. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19, Mobil is liable for civil penalties of not more than \$25,000 per day for each violation of Condition No. 3 of the Mobil PSD Permit that occurred on or before January 30, 1997; of not more than \$27,500 per day for each violation of Condition No. 3 of the Mobil PSD Permit that occurred between January 31, 1997 and March 15, 2004; and of not more than \$32,500 per day for each violation of Condition No. 3 of the Mobil PSD Permit that occurred after March 15, 2004.

SECOND CLAIM FOR RELIEF.

(Failure to Comply with Condition No. 4 of the Mobil PSD Permit)

56. Paragraphs 1 through 47, above, are realleged and incorporated herein by reference.

57. The Facility's emissions of SO₂ were approximately 72 tpy in 1994, 84.8 tpy in 1995, 99.1 tpy in 1996, and 62.8 tpy in 1997. Based on information and belief, the Facility's emissions of SO_x have exceeded 1.25 tpy in each year from 1998 to the present.

58. Mobil violated Condition No. 4 of the Mobil PSD Permit, which limits facility-

1 wide SO₂ emissions to 1.25 tpy, from 1994 to the present.

2 59. The Facility's VOC emissions were approximately 70 tpy in 1994, 67.6 tpy in
3 1995, 50.7 tpy in 1996, and 212.7 tpy in 1997.

4 60. Mobil violated Condition No. 4 of the Mobil PSD Permit, which limits facility-
5 wide VOC emissions to 38 tpy, from 1994 through 1997.

6 61. Each violation of Condition No. 4 of the Mobil PSD Permit subjects Mobil to
7 liability under the Act.

8 62. Unless enjoined by an order of the Court, Mobil will continue to violate the Act.
9 Pursuant to Section 113(b) of the Act, the United States is entitled to injunctive relief against
10 Mobil for its continuing violations of the Act.

11 63. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19,
12 Mobil is liable for civil penalties of not more than \$25,000 per day for each violation of
13 Condition No. 4 of the Mobil PSD Permit that occurred on or before January 30, 1997; of not
14 more than \$27,500 per day for each violation of Condition No. 4 of the Mobil PSD Permit that
15 occurred between January 31, 1997 and March 15, 2004; and of not more than \$32,500 per day
16 for each violation of Condition No. 4 of the Mobil PSD Permit that occurred after March 15,
17 2004.

18 THIRD CLAIM FOR RELIEF
19 (Failure to Comply with NSPS Flare Requirements)

20 64. Paragraphs 1 through 47, above, are realleged and incorporated herein by
21 reference.

22 65. In accordance with 40 C.F.R. §§ 60.482-4(c), 60.482-10(a) and (d), and 60.633(g),
23 the Gas Plant's upright flare is subject to the flare requirements of 40 C.F.R. § 60.18.

24 66. Mobil installed a thermocouple on the Gas Plant's upright flare to monitor the
25 presence of a flare pilot flame, but the thermocouple has not operated consistently.

26 67. Mobil's failure to operate a thermocouple or any other equivalent device to detect
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1 the presence of a pilot flame on the Gas Plant's upright flare constitutes a violation of 40 C.F.R.
2 § 60.18(f)(2).

3 68. Mobil's failure to operate a thermocouple or any other equivalent device to detect
4 the presence of a pilot flame on the Gas Plant's upright flare also constitutes a violation of 40
5 C.F.R. § 60.11(d), which requires owners and operators to maintain and operate any affected
6 facility, including associated air pollution control equipment, in a manner consistent with good
7 air pollution control practices for minimizing emissions.

8 69. Each violation of 40 C.F.R. § 60.18(f)(2) and each violation of 40 C.F.R.
9 § 60.11(d) subjects Mobil to liability under the Act.

10 70. Unless enjoined by an order of the Court, Mobil will continue to violate the Act.
11 Pursuant to Section 113(b) of the Act, the United States is entitled to injunctive relief against
12 Mobil for its continuing violations of the Act.

13 71. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19,
14 Mobil is liable for civil penalties of not more than \$25,000 per day for each violation of either 40
15 C.F.R. § 60.18(f)(2) or 40 C.F.R. § 60.11(d) that occurred on or before January 30, 1997; of not
16 more than \$27,500 per day for each violation of either 40 C.F.R. § 60.18(f)(2) or 40 C.F.R.
17 § 60.11(d) that occurred between January 31, 1997 and March 15, 2004; and of not more than
18 \$32,500 per day for each violation of either 40 C.F.R. § 60.18(f)(2) or 40 C.F.R. § 60.11(d) that
19 occurred after March 15, 2004.

20 **FOURTH CLAIM FOR RELIEF**
21 **(Failure to Comply with NSPS LDAR Requirements)**

22 72. Paragraphs 1 through 47, above, are realleged and incorporated herein by
23 reference.

24 73. Beginning 180 days after the initial start-up of the Gas Plant, Mobil failed to
25 comply with the NSPS LDAR requirements of 40 C.F.R. §§ 60.482-1(a), (b), and (d) and 60.482-
26 2 through 60.482-10 at the Gas Plant's dehydration units and field gas gathering systems.
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1 74. Each violation of these NSPS LDAR requirements subjects Mobil to liability
2 under the Act.

3 75. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19,
4 Mobil is liable for civil penalties of not more than \$25,000 per day for each violation of these
5 NSPS LDAR requirements that occurred on or before January 30, 1997; and of not more than
6 \$27,500 per day for each violation of these NSPS LDAR requirements that occurred between
7 January 31, 1997 and March 15, 2004.

8 FIFTH CLAIM FOR RELIEF
9 (Failure to Comply with NESHAP Notification Requirements)

10 76. Paragraphs 1 through 47, above, are realleged and incorporated herein by
11 reference.

12 77. On or about September 3, 1997, the Navajo EPA, in conjunction with personnel
13 from the Arizona Department of Environmental Quality, inspected the Facility and discovered
14 employees, agents, or contractors of Mobil dismantling the Gas Plant.

15 78. The dismantling of the Gas Plant was a "demolition" as that term is defined in 40
16 C.F.R. § 61.141.

17 79. With regard to the dismantling of the Gas Plant, Mobil is an "owner or operator of
18 a demolition or renovation activity" as that term is defined in 40 C.F.R. § 61.141.

19 80. Mobil did not provide the Administrator or the Navajo EPA with written notice of
20 its intention to demolish the Gas Plant before the commencement of the demolition activities.

21 81. Mobil violated 40 C.F.R. § 61.145(b) by failing to submit written notice of its
22 intention to demolish the Gas Plant.

23 82. Pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 40 C.F.R. Part 19,
24 Mobil is liable for civil penalties of not more than \$27,500 per day for its violation of 40 C.F.R.
25 § 61.145(b).

1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff respectfully prays that this Court:

3 1. Permanently enjoin Mobil from operating the Facility in violation of the Act, the
4 Mobil PSD Permit, NSPS Subparts A and KKK, and NESHAP Subparts A and M;

5 2. Assess civil penalties against Mobil of up to \$25,000 for each day of each
6 violation of the Act (including violations of the Mobil PSD Permit and NSPS Subparts A and
7 KKK) on or before January 30, 1997; up to \$27,500 for each day of each violation of the Act
8 (including violations of the Mobil PSD Permit, NSPS Subparts A and KKK, and NESHAP
9 Subparts A and M) between January 31, 1997 and March 15, 2004; and up to \$32,500 for each
10 day of violation of the Act (including violations of the Mobil PSD Permit and NSPS Subparts A
11 and KKK) after March 15, 2004;

12 3. Award Plaintiff its costs and disbursements in this action; and

13 4. Grant such other and further relief as this Court deems just and proper.

14 Respectfully submitted,

15
16 Dated: 3/25/05

By: _____,

17 THOMAS L. SANSONETTI
18 Assistant Attorney General
19 Environment and Natural Resources Division
20 United States Department of Justice

21 Dated: _____

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